

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MAURICE ROGERS,	:	
	:	
Plaintiff(s)	:	
	:	Case Number: 1:02cv79-SJD
vs.	:	
	:	District Judge Susan J. Dlott
HARRY RUSSELL,	:	
	:	
Defendant(s)	:	

ORDER

The Court has reviewed the Report and Recommendations of United States Magistrate Judge David S. Perelman filed on March 31, 2004(Doc. 16), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired April 19, 2004, hereby ADOPTS said Report and Recommendations.

IT IS ORDERED AND ADJUDGED that Petitioner's remaining claim alleged in Ground Four of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1, p. 6) is hereby DENIED with prejudice.

A certificate of appealability shall not issue with respect to the claim alleged in Ground Four, which has been addressed on the merits, because petitioner has failed to make a substantial showing of the denial of a constitutional right based on these claims. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). However, a certificate of appealability shall issue with respect to the claims alleged in Grounds One through Three, previously dismissed with prejudice by Order filed September 16, 2003 on the ground that they are barred from review by the one-year statute of limitations set forth in 28 U.S.C. § 2244(d) (*see* Docs. 6, 11); under the two-part test

established in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), and applicable to claims barred from review on procedural grounds, “jurists of reason would find it debatable” (1) “whether this Court is correct in its procedural ruling” that Grounds One through Three are time barred, and (2) “whether the petition states a viable claim of the denial of a constitutional right” as the issues presented in Grounds One through Three are “adequate to deserve encouragement to proceed further,” *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983). *See also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court shall certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would be taken in “good faith,” and therefore GRANT petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge